

# **EXHIBIT B**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

**JOSEPH F. HUTCHISON, et al.**

**Plaintiffs,**

**-v-**

**FIFTH THIRD BANCORP,**

**Defendant.**

) **Case No. 1:01-789**

)

) **(Judge Beckwith)**

) **(Magistrate Judge Hogan)**

)

)

) **AFFIDAVIT OF PATRICK F. FISCHER**

) **IN SUPPORT OF DEFENDANT'S**

) **MOTION FOR AN AWARD OF**

) **ATTORNEY'S FEES**

)

I, Patrick F. Fischer, having first been duly cautioned and sworn, depose and state as follows:

1. I am a partner in the law firm of Keating, Muething & Klekamp PLL, One East Fourth Street, Suite 1400, Cincinnati, Ohio 45202. I submit this Affidavit in support of Defendant, Fifth Third Bancorp's, Motion for Award of Attorney's Fees. I have previously been qualified to provide expert testimony on the reasonableness of attorneys' fees in complex litigation.

2. From the outset, I have acted as lead counsel for Fifth Third in handling the above-captioned litigation. When I engaged Plaintiffs in settlement negotiations during the early stages of the litigation, the Plaintiffs demanded "about \$2 million" or "above \$1.5 million" from Fifth Third to settle the case.

3. As this case progressed, despite evidence showing that the amount of damages was approximately \$350,000, Plaintiffs were still demanding a settlement of \$1.6 million as late as May or June of 2005. The evidence demonstrated that the excess shares in the Suburban ESOP were worth no more than \$350,000.

- 2 -

4. Fifth Third rejected Plaintiff's demand of \$1.6 million, informing Plaintiffs' counsel that such a demand was outrageous given Fifth Third's lack of culpability and the limited possible damages in this case.

5. Not until the summer of 2005 – almost four years after the lawsuit was filed and six years after this dispute first arose – did Plaintiffs finally concede that their compensatory damages were approximately \$350,000.

6. The total amount of fees incurred by Fifth Third in defending this litigation was \$206,531.24. A chart showing the breakdown of the fees incurred is attached to this affidavit. Should this Court need further detail on the fees incurred, Fifth Third will provide redacted copies of the monthly invoices sent to Fifth Third.

7. The rates charged by Keating Muething & Klekamp to Fifth Third are the customary and usual rates for the attorneys who worked on this case and are normal rates for attorneys practicing in the Cincinnati area.

8. The amount of fees sought by this motion is a total of the fees actually paid by Fifth Third to Keating Muething & Klekamp in defending this litigation.

9. Under the factors set forth in the Ohio Code of Professional Responsibility, D.R. 2-106, these fees are reasonable, and were necessarily incurred, given the complexity of the issues, the Plaintiffs' shifting litigation strategy, and the number of motions filed in this case.

10. These fees also are reasonable given the length of time that this case has been pending; the original complaint was filed in 2001.



FIFTH THIRD BANCORP/SUBURBAN FEDERAL/  
HUTCHISON, JOSEPH  
FI2260/BL0001

INVOICE NO.	DATE OF INVOICE	ATTORNEY'S FEE	COSTS	DATE OF PAYMENT
634437	01/16/2002	1,663.00	1.00	07/02/2002
638171	02/21/2002	8,343.40	644.13	07/02/2002
638839	03/19/2002	110.00		04/17/2002
641936	04/17/2002	250.00	10.00	05/08/2002
644982	05/14/2002	712.04	0.46	07/02/2002
650372	06/17/2002	471.25	1.25	07/15/2002
651291	07/15/2002	135.00		08/07/2002
654188	08/12/2002	135.00		08/30/2002
659293	09/12/2002	4,429.10	21.00	10/04/2002
660458	10/15/2002	1,229.25		11/06/2002
665295	11/19/2002	6,378.75	106.85	12/11/2002
667911	12/19/2002	2,872.50	135.85	02/10/2003
668830	01/16/2003	6,672.50	86.17	07/08/2003
671809	02/17/2003	142.50	47.61	07/08/2003
677853	04/15/2003	4,106.25	36.85	07/08/2003
680963	05/13/2003	913.75	19.40	07/08/2003
683814	06/25/2003	4,564.00	324.12	07/08/2003
686899	07/15/2003	1,545.75	170.23	08/13/2003
689879	08/14/2003	12,134.70	603.39	09/03/2003
692909	09/16/2003	320.00		10/08/2003
696935	10/15/2003	5,486.88	2.52	11/18/2003
699909	11/17/2003	4,856.25	281.04	12/17/2003
702726	12/29/2003	192.00		01/26/2004
708363	02/25/2004	185.25		03/17/2004
714606	04/19/2004	57.00		05/26/2004
717655	05/19/2004		.35	06/23/2004
723920	07/19/2004	114.00		08/06/2004
728774	08/11/2004	76.95		09/16/2004
731784	09/16/2004	2,090.50	.45	10/14/2004
734964	10/18/2004	8,878.70	103.25	11/24/2004
737850	11/24/2004	8,327.70	100.03	12/27/2004
740815	12/21/2004	4,170.03	220.64	02/09/2005
743774	01/21/2005	1,356.13	107.40	03/01/2005
746745	02/14/2005	932.55	2.25	03/22/2005
752196	03/16/2005	2,431.53	138.13	03/29/2005
753236	04/11/2005	1,399.83	144.00	05/17/2005
758720	05/23/2005	1,711.90	3,850.74	07/30/2005
763786	06/13/2005	2,478.90	472.30	07/19/2005
764853	07/11/2005	32,591.65	2,248.86	07/28/2005
768179	08/18/2005	38,431.30	2,513.82	09/22/2005
771310	09/13/2005	13,633.45	67.32	09/27/2005
<b>TOTAL</b>		<b>206,531.24</b>	<b>12,461.41</b>	